

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 05-0174  
County Adjusted Gross Income Tax  
Tax Period 2001**

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**Issue**

**I. County Option Income Tax-Imposition**

**Authority:** IC 6-8.1-5-1(b); IC § 6-3.5-6-8; IC § 6-3.5-6-1.

The taxpayer protests the imposition of the county adjusted gross income tax.

**Statement of Facts**

The taxpayers are a married couple living in Illinois. In 2001 they received a distribution from an Indiana Sub Chapter S corporation. The Indiana Department of Revenue assessed the County Option Income Tax, penalty, and interest on the distribution. The taxpayers protested this assessment. A hearing was held and this Letter of Findings results.

**I. County Option Income Tax-Imposition**

**Discussion**

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(b).

The County Option Income Tax is imposed on county taxpayers. IC § 6-3.5-6-8.

A "county taxpayer" is defined at IC § 6-3.5-6-1 as follows:

"County taxpayer" as it relates to a county, means any individual:

(1) who resides in that county on the date specified in section 20 of this chapter; or

(2) who maintains his principal place of business or employment in that county on the date specified in section 20 of this chapter and who does not reside on that same date in another county in which the county option

income tax, county adjusted gross income tax, or the county economic development tax is in effect.

The taxpayers did not live in the same county as the Sub Chapter S corporation. Their principal places of business or employment were not in that county. Therefore, they do not meet the definition of a taxpayer subject to the imposition of the County Option Income Tax for the county in which the Sub Chapter S corporation is located. The Indiana Department of Revenue improperly imposed the tax on the taxpayers.

### **Finding**

The taxpayer's protest is sustained.